IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

CRL.A.No. 367 of 2001()

CC.337/1995 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

.....

APPELLANT:

C.K.SASI,
S/O.KUNJUNNY,
CHONKULANGARA HOUSE,
AYYANTHOLE, THRISSUR.

BY ADV. SRI.JIJO PAUL
SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENTS:

---

1. K.S.SATHYAN,
S/O.SANKARAN,
KALATHIL VEEDU,
SANKARAYYAR ROAD,
THRISSUR.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31

BY ADV. SRI.P.V.CHANDRA MOHAN
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.367 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 13th day of September, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.337/1995 with respect to the proceedings initiated under Section 138 of the Negotiable Instruments Act, in which the accused was acquitted.

2. The case of the complainant is that the accused is liable to pay a sum of Rs.41,000/- with respect to a transaction of purchase of an auto-rickshaw belonging to the complainant and towards the amount due, that is, Rs.41,000/-, a cheque dated 05/04/1995 was issued, which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P9. Defence got marked Ext.D1 through PW.1

4. The defence case is that only Rs.11,000/- was due and the impugned cheque was issued for Rs.11,000/- and the complainant has

altered the figure 11,000 into 41,000. In the witness box, PW.1, the complainant has testified that he had borrowed Rs.3,000/- from the accused and towards the same as security, he had handed over the R.C book, sale letter and a blank stamp paper to the accused. Subsequently, when he went to repay the amount it was found that the accused transferred the vehicle to somebody else and also availed a loan of Rs.10,000/- from a financier. The accused agreed to get the auto rickshaw purchased in his name and it was averred that the value of the auto rickshaw was fixed as Rs.44,000/- and the cheque was issued for Rs.41,000/-. The petitioner was confronted with Ext.D1 agreement wherein it is mentioned that towards the amount due for the purchase of the auto rickshaw, a cheque bearing No.058848 is issued from account No.5203 of the accused at the particular bank. Ext.P1 cheque number tallies with the cheque number mentioned in Ext.D1. The signature in Ext.D1 has been admitted by PW.1. As noted by the court below, the figure 41,000 written in Ext.P1 appears to be altered from 11,000 to 41,000. The court below has also noted that a portion of the digit '4' is written in a different ink. As pointed out by the counsel for the respondent, it is unlikely that for a sum of Rs.3,000/- borrowed that the complainant could have handed over the R.C book, sale letter as well as the blank stamp paper. He has not

adduced any supporting evidence. In the circumstances, I find no reason to interfere in the findings of the court below.

The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.367 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

13th September, 2007